

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STAMAR RICHARD MILLER,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL NO. 19-CV-5670
	:	
GEORGE W. HILL CORRECTIONAL	:	
FACILITY, <i>et al.</i>,	:	
Defendants	:	

MEMORANDUM

YOUNGE, J.

DECEMBER 4, 2019

Plaintiff Stamar Richard Miller has filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and an Application for Leave to Proceed *In Forma Pauperis*. Named as Defendants are the George W. Hill Correctional Facility (“GWH”) and Female Guard C/O Tucker. For the following reasons, Miller will be permitted to proceed without the payment of filing fees, GWH will be dismissed with prejudice, and the Complaint will be served on Defendant Tucker.

I. FACTUAL ALLEGATIONS

The Complaint in this case is quite brief. Miller alleges that he was assaulted in his cell on November 19, 2019 by Defendant Tucker, who pushed his head back poked him in his left eye. (ECF No. 3 at 12.)¹ He required medical attention as a result of the incident. (*Id.*) Miller has named Tucker as a Defendant as well as GWH.

II. STANDARD OF REVIEW

Because Miller appears to be unable to pay the filing fee in this matter, the Court will grant him leave to proceed *in forma pauperis*.² Accordingly, 28 U.S.C. § 1915(e)(2)(B)(ii)

¹ The Court adopts the pagination supplied by the CM/ECF docketing system.

² Because Miller is a prisoner, under the provisions of the Prison Litigation Reform Act, he must still pay the filing fee in full in installments.

applies, which requires the Court to dismiss the Complaint if it fails to state a claim. Whether a complaint fails to state a claim under § 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), *see Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999), which requires the Court to determine whether the complaint contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted).

Conclusory allegations do not suffice. *Id.* As Miller is proceeding *pro se*, the Court construes his allegations liberally. *Higgs v. Att’y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

III. DISCUSSION

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988). The § 1983 claim against GWH must be dismissed because a jail is not a “person” under Section 1983. *Miller v. Curran-Fromhold Corr. Facility*, Civ. A. No. 13-7680, 2014 WL 4055846, at *2 (E.D. Pa. Aug. 13, 2014) (citing *Mitchell v. Chester Cty. Farms Prison*, 426 F. Supp. 271 (E.D. Pa. 1976). The claim against Defendant Tucker, will however, be served. An appropriate Order follows.

IT IS SO ORDERED.

BY THE COURT:

/s/ Judge John Milton Younge
Judge John Milton Younge